

# Police Prosecutor Update

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A recent Court of Appeals case involving a controlled buy shows that failure to strictly follow the proper procedures can be fatal to the case. The court's opinion indicates that, for reasons not stated, the informant was not searched prior to the buy and did not testify at trial. Also, the audiotape of the buy was unintelligible.

Delivery is the "actual or constructive transfer from one person to another of a controlled substance." A properly conducted controlled buy will permit an inference that the defendant had prior possession of the controlled substance and transferred it to the CI. The court described the proper conduct of the buy as follows:

A controlled buy consists of searching the person who is to act as the buyer, removing all personal effects, giving him money with which to make the purchase, and then sending him into the residence in question. Upon his return he is searched again for contraband. Except for what actually transpires within the residence, the entire transaction takes place under the direct observation of the police. They ascertain that the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction.

The court concluded by stating that the pre-buy search establishes the person making the buy for the police does not have contraband prior to the transaction with the target. Surveillance during the transaction with the target establishes the target as the source of the contraband and excludes other sources of contraband. Therefore, any contraband recovered during the search after the transaction is attributable to the target. The Court of Appeals stated that, where the CI was not searched initially, the State's evidence fell short of proving that the defendant possessed the contraband before the buy and transferred it to the CI.

With regard to the sufficiency of the pre-buy search itself, the Court of Appeals has determined that thorough pat-down searches of informants are adequate in controlled buys. A search of shoes, socks, and body cavities is not required.

It might be helpful to examine a couple of other cases dealing with controlled buys. One involved a buy that was in all respects conducted properly *except* that the police officer in charge of the buy lost sight of his CI for about 20 seconds when the CI walked from the front door of the defendant's residence to the back door. The Court of Appeals reiterated that the law is, except for what happens in the residence, the *entire* transaction must take place under the direct observation of the police in order to have a sufficiently controlled buy. However, the court in this case said that the 20-second lapse in observation did not render the control over the buy insufficient. It did stress, though, that in some cases loss of visual contact could make the control inadequate.

In another case, the controlled buy took place in an apartment. However, the police observed the informant only until he entered the apartment building, not the apartment itself. The Court of Appeals held that there was not sufficient control over the buy to establish probable cause for a search warrant for any specific apartment in the building.

Cases: *Watson v. State*, 839 N.E.2d 1291 (Ind. Ct. App. 2005).  
*Wright v. State*, 836 N.E.2d 283 (Ind. Ct. App. 2005).  
*Whirley v. State*, 408 N.E.2d 629 (Ind. Ct. App. 1980).  
*Flaherty v. State*, 443 N.E.2d 340 (Ind. Ct. App. 1982).